

## Interpreting Taxing Statutes # 88 – Recognition by associated words [*noscitur a sociis*]

The meaning of a statutory term can be gathered from its associated words. The Latin maxim *noscitur a sociis* states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings. [Ben 23.1]

### SYNOPSIS

#### *Noscitur a sociis*

- Surrounding text
- *Societas*
- Word inserted to prevent doubt
- Words used in same sense
- Determining the meaning of a neutral word
- Adopting a restricted meaning
- Adopting a less usual meaning
- Words in diminishing order
- Resolving a potential ambiguity
- Other examples

#### *Noscitur a sociis*

The principle that the meaning of a word is recognised by its associates is traditionally expressed in the Latin maxim *noscitur a sociis*. The principle overlaps with the requirement to read an Act as a whole. A particular application of this principle is *ejusdem generis* principle.

**Surrounding text:** A word or phrase in an enactment must always be construed in the light of the surrounding text. Said as follows:

‘Words, and particularly general words, cannot be read in isolation; their colour and content are derived from their context’.<sup>1</sup>

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<sup>1</sup> A-G HRH Prince Ernest Augustus of Hanover (1957) AC 436 cited in Bennion 2020 p 673

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Again, said as follows:

‘English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words ...’<sup>2</sup>

***Societas*:** The maxim *noscitur a sociis* is always a treacherous one unless you know the *societas* to which the *socii* belong.<sup>3</sup> The Latin word *societas* means ‘society and the nature of the intended society (if any) can only be gathered from the words used. There may not be any precise intention, but the ‘colour’ of the members of the society (*socii*) is nevertheless an approximate indication of meaning. For example, while interpreting the Capital Allowances Act 1990 of England, s 18(1), which defined the term ‘industrial building or structure’ as one used for ‘a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process’, the court said ‘the close proximity between the two phrases requires that the word “goods” in the second should be given the same meaning as in first’.<sup>4</sup>

**Word inserted to prevent doubt:** As always with interpretative criteria, other considerations may displace the principle. For example, certain terms may be specified not so as to give colour to a general phrase but to prevent any doubt as to whether they are included. Said as follows:

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<sup>2</sup> In *Bourne (Inspector of Taxes) v Norwich Crematorium Ltd* (1967) 1 WLR 691 cited in *Bennion 2020* p 674

<sup>3</sup> *Letang v Cooper* (1965) 1 QB 232 cited in *Bennion 2020* p 674

<sup>4</sup> *Girobank Plc v Clarke (Inspector of Taxes)* [(1998) 4 All ER 312 cited in *Bennion 2020* p 674

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‘Where an Act defines a thing as including specified matters it is not always right to “interpret the general words in the light of the particular instances given”. It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they did or not.’<sup>5</sup>

**Words used in same sense:** The basic operation of the principle is to require related words to be treated as used in the same sense.

For example, the phrase ‘having in possession’, if taken along, embraces the concept of legal as well as physical possession. When used in an enactment which reads ‘having in possession or conveying in any manner’ (where ‘conveying’ is clearly limited to physical removal) the phrase has by implication a more limited meaning. It must be limited ‘making the one co-extensive with the other, and confining it to “having” ejusdem generis with “conveying”’.<sup>6</sup>

For example, while construing the provisions of the Courts Act 2003 of England, Sch 2, the court said:

‘The context I am considering is the transfer of “property, rights or liabilities”, and in this context, it would be anomalous to construe “property” as meaning something physical, when there is a clear non-physical genus.’

**Determining the meaning of a neutral word:** Where an enactment includes a word which in itself is neutral or colourless, the context provides the colouring agent.

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<sup>5</sup> Inland Revenue Commrs v Parker (1966) AC 141 cited in Bennion 2020 p 674

<sup>6</sup> Hadley v Perks (1866) LR 1 QB 444 cited in Bennion 2020 p 675

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For example, the court said that the word ‘payment’ has no one settled meaning but takes its colour very much from the context in which it is found.<sup>7</sup>

Again, in a different case, the court said ‘the words “occupation” and “occupier” are not words of art having an ascertained legal meaning applicable, or prima facie applicable, wherever you find them in a statute, but take their colour from the context of the statute in which they are found.’<sup>8</sup>

Again, in a different case, the court said the neutral word ‘case’ was held to mean a solid case, and not such a container as a lines bag, because of its context in the phrase ‘case or canister’ as the required container for gunpowder when taken into a mine.<sup>9</sup>

**Adopting a restricted meaning:** The context may indicate that a restriction is intended of the literal or usual meaning.

For example, the word ‘right’ was given a restricted meaning because of its associates in a saving for ‘any right, claim, privilege, franchise, exemption, or immunity’ in the Thames Conservancy Act 1857 of England, s 179. It thus did not include a right of navigation enjoyed by the public at large.<sup>10</sup>

Again, in a different case, where the court concerned the interpretation of the words ‘for the purpose of relaying or repairing the permanent way’ in safety regulations requiring a look-out to be posted where persons were working for the stated purpose. The question was whether the routine oiling of signaling

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<sup>7</sup> Garforth (Inspector of Taxes) v Newsmith Stainless Ltd (1979) 1 WLR 409 cited in Bennion 2020 p 675

<sup>8</sup> Lee-Varhulst (Investments) Ltd v Harwood Trust (1973) QB 204 cited in Bennion 2020 p 675

<sup>9</sup> Foster v Diphwys Casson Slate Co (1887) 18 QBD 428 cited in Bennion 2020 p 675

<sup>10</sup> Kearns v Cordwainers’ Co (1859) 28 LJCP 285 cited in Bennion 2020 p 676

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apparatus fell within the word ‘repairing’. The court held that it did not. It was said:

‘... the combining of “repairing” with “relaying”, if it has any effect at all, seems to me to narrow, not to widen the meaning of the former word. The one word suggests renewal, the other the putting of something into proper order, not the prevention of some future fault. The combined words suggest the putting of the track into proper order, either by renewing or mending.’<sup>11</sup>

**Adopting a less usual meaning:** The context may indicate that the less usual meaning of a word is to be adopted.

For example, the Ecclesiastical Courts Jurisdiction Act 1860 of England, s 2, penalizes ‘riotous, violent, or indecent behavior, in churches and churchyards’. Where the defendant had been convicted of an offence under s 2, having shouted out in a Methodist church service (held in connection with the Labour Party conference): ‘Oh you hypocrites, how can you use the word of God to justify your policies?’, it was held that in s 2 the word ‘indecent’ did not have its usual sexual connotation but, because of the surrounding words, must be taken to refer to the indecency of creating some disturbance within a sacred place.<sup>12</sup>

**Words in diminishing order:** A string of near-synonyms may not be intended to have equivalent meanings, but to operate in diminishing order.

For example, several sections of the Offences against the Person Act 1861 of England contain the phrase ‘poison or other destructive or noxious thing’. In a case, insertion of sleeping tablets in neighbour’s bottle of milk held administration of a

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<sup>11</sup> London and North Eastern Rly Co v Berriman (1946) AC 278 cited in Bennion 2020 p 676

<sup>12</sup> Abrahams v Cavey (1968) 1 QB 479 cited in Bennion 2020 p 676

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 noxious thing within the meaning of s 24. The court said in relation to the meaning of the phrase in s 24:

‘It was submitted that the meaning of the word ‘noxious’ must take colour from the preceding words. We do not accept that construction. It seems to us, looking at the relevant sections, that the statute is dealing with offences in a declining order of gravity and that by ‘noxious’ is meant something different in quality from and of less importance than poison or other destructive things.’<sup>13</sup>

**Resolving a potential ambiguity:** Where a term is ambiguous, reference to a nearby passage may resolve the ambiguity.

For example, where the Financial Services Act 1986 of England, Sch 1, referred to a contract the purpose of which ‘is to secure a profit or avoid a loss’. In a case, the question arose whether ‘secure a profit’ meant obtain a profit or arrange security for a profit. The court decided the point by reference to a note included in para 9 which disapplied the paragraph ‘where the profit is to be obtained’ in a specified manner.<sup>14</sup>

**Other examples:** The noscitur a sociis principle has been applied in many other cases, of which the following are just a few examples.

In the phrase ‘for public refreshment, resort and entertainment’ in the Refreshment Houses Act 1860 of England, s 6, ‘entertainment’ was held to mean reception of the public rather than entertaining them by a theatrical, etc. performance.<sup>15</sup>

In the phrase ‘floors, steps, stairs, passages and gangways’ in the Factories Act 1961 of England, s 28(1) (obstruction), ‘floors’ was

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<sup>13</sup> R v Marcus (1981) 1 WLR 774 cited in Bennion 2020 p 677

<sup>14</sup> City Index Ltd v Leslie (1992) QB 98 cited in Bennion 2020 p 677

<sup>15</sup> Muir v Keay (1875) LR 10 QB 594 cited in Bennion 2020 p 677

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held to mean parts of floors over which workmen were likely to pass and repass.<sup>16</sup>

The Larceny Act 1916 of England, s 28(2), penalised the possession by night of ‘any key, picklock, crow, jack, bit, *or other implement of housebreaking*’. It was held that the italicized phrase should be applied objectively as covering all implements capable of use in housebreaking.<sup>17</sup>

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<sup>16</sup> Pengelly v Bell Punch Co Ltd (1964) 1 WLR 1055 cited in Bennion 2020 p 677

<sup>17</sup> R v Patterson (1962) 2 QB 429 cited in Bennion 2020 p 677